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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1978

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**No. 78-1848**

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UNITED STATES OF AMERICA, EX REL JULIUS PETROFSKY,  
AND JULIUS PETROFSKY IN HIS OWN BEHALF,  
*Petitioners,*

v.

VAN COTT, BAGLEY, CORNWALL & MCCARTHY, ET AL.

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On Petition For A Writ Of Certiorari To The  
United States Circuit Court Of Appeals  
For The Tenth Circuit

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**PETITIONER PETROFSKY'S RESPONSE CONTRA  
RESPONDENTS BRIEF IN OPPOSITION**

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JULIUS PETROFSKY  
*Pro Se for Petitioners*  
4049 Balboa Street  
San Francisco, California 94121

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**PETITIONER'S ARGUMENT**

**Re Respondents' "Statement Of The Case"**

- A. Page 3, 2nd paragraph is *significantly false!* Respondent's Motion To Dismiss (herein Appendix 1) doesn't have any relationship to,—

More specifically Respondents' asserted the allegations of the Complaint were insufficient to state a claim for

fraud under the Act or any other theory and, furthermore, that Petrofsky's action was frivolous, being designed not to assert a legitimate claim but rather to harass and frustrate reputable lawyers and a Federal judge.

NOTE: Appendix 1, supra,—

Defendants move the dismissal of this action on the ground that the Complaint fails to state a claim upon which relief can be granted.

is not only without supportive argument but even omitted the Federal Rule of Civil Proc. for it. The judge even prevented Respondents' attorney from speaking on the Complaint's issues so they never went to trial as they could have been had Respondents' attorney spoken about even one of them.

B. Respondents' page 3, 4th paragraph,—

[T]he Circuit Court . . . after requesting briefs on the issue, dismissed Petrofsky's appeal for failure to timely file.

is at its best, a half-truth, if not *false!* Appendix 2 (herein) is the circuit court "request." It is for "memoranda" and limited to the United States as a,—

party in interest.

The request didn't address itself to the Complaint's issue(s).

C. The Circuit Court decision (Petition . . . Appendix 1) went beyond a "party in interest" to "*real* party in interest." Nevertheless Petitioner Petrofsky argued that the United States is at the least, "a party in interest" if not a "*real* party in interest.

### Re Respondents' "Argument"

A. Page 4, 2nd paragraph, last sentence,—

Rather, the Petition is devoted to arguments why Petrofsky feels the Circuit Court of Appeals should have decided in his favor.

is FALSE! NOTE: Petrofsky didn't argue for decision "in his favor" (nor does Respondents' attorney know of Petrofsky's feeling) but for his and the United States 'day in Court,' i.e., not to having been subjected to a tenuous Rule.

B. Page 5, 3rd line,—

of the numerous cases cited . . . not one is concerned with the question at issue in this action

is unsupported by Respondents'. And Respondents' following that reference to the Civil War enactment of the Act (amended at a much more recent date) is irrelevant and immaterial.

C. Respondents' B, 2nd sentence,—

### THE UNITED STATES HAVING EXPRESSLY WITHDRAWN

is FALSE! The United States didn't do so. (Expressly or otherwise). By way of example,—when a female "declines" sexual activity that is totally different to a male's having "withdrawn" (after sexual penetration).

This Court has judicial knowledge that the U.S. Dept. of Justice lost many lawsuits; therefore that department is *not* infallible. The fact of its having "declined" to appear is not only immaterial and irrelevant but subject to this Court's ex parte inquiry for its having declined to appear. Petitioner Petrofsky has documentation which he would present to one or all the Justices which strongly (if not irrevocably), and includes testimony of former Assistant

U.S. Attorneys, that the subject Department committed non-feasance by its loathing to "take-on" U.S. District Court Chief Judge Willis W. Ritter (Utah), who was directly involved in this lawsuit, to a greater degree than was testified to by the Chief Judge of the U.S. Court of Appeals, Tenth Circuit, in a U.S. Senate Hearing.

#### CONCLUSION

- A. For any of the foregoing reasons, if not for all, the Respondents' Brief in Opposition should be stricken.
- B. The Respondents' attorney per page 3, 2nd paragraph, is scurrilous.

Respectfully submitted,

JULIUS PETROFSKY  
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4049 Balboa Street  
San Francisco, California 94121

September 21, 1979

## APPENDIX

**APPENDIX 1**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

MOTION TO DISMISS  
Civil No. C-77-0045

THE UNITED STATES OF AMERICA, Ex Relator;  
JULIUS PETROFSKY, *Plaintiffs*,

vs.

VAN COTT, BAGLEY, CORNWALL, MCCARTHY, a Utah law firm which is also a Utah corporation; and Utah Attorneys: C. KEITH ROOKER, CLIFFORD ASHTON, ROBERT M. ANDERSON, GRANT H. BAGLEY, DENNIS MCCARTHY, RAY G. MARTINEAU, RICHARD W. GIAUQUE, BRENT GIAUQUE, RICARDO B. FERRARI, HALDOR T. BENSON, SCOTT E. SAVAGE, DALE A. KIMBALL, GRANT MACFARLANE, JR., CHRIS WANGSGARD, and DAVID GREENWOOD, and JOHN DOE #1 through JOHN DOE #10, *Defendants*.

Defendants move the dismissal of this action on the ground that the Complaint fails to state a claim upon which relief can be granted.

DATED this 8th day of March, 1977.

SNOW, CHRISTENSEN & MARTINEAU

/s/ By HAROLD G. CHRISTENSEN  
Harold G. Christensen  
Attorneys for Defendants  
700 Continental Bank Bldg.  
Salt Lake City, Utah 84101

**APPENDIX 2**

August 17, 1978

Mr. Julius Petrofsky  
4049 Balboa Street  
San Francisco, California 94121

Re: No. 78-1576, U.S.A., etc., Petrofsky v. VanCott, Bagley,  
etc., et al

Dear Mr. Petrofsky:

The Court has assigned the captioned case to Calendar D. At this time, the Court is considering summary dismissal for the reason that the appeal may not be within the jurisdiction of the Court. Pursuant to Rule 9 of the Rules of this Court, the parties are requested to submit memoranda addressing the issue of whether the United States was a party in this action and, in conjunction therewith, whether the notice of appeal was timely filed.

The original and three copies of such memoranda, together with proof of service on opposing parties, may be filed in this Court within fifteen (15) days of today's date. Briefs need not be filed until further notice from the Court.

If this office can be of further assistance to you in this matter, please do not hesitate to contact me.

Very truly yours,

HOWARD K. PHILLIPS, Clerk

By

Deputy Clerk

TC/sb

cc: Harold Christensen & Deen Benson, Snow, Christensen  
& Martineau, 700 Continental Bank Bldg., Salt Lake  
City, UT 84101